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ORDINANCES: 93-DAY PENALTY

House Bill 4302 as introduced
Sponsor: Rep. Beverly Bodem

House Bill 4303 as introduced
Sponsor: Rep. Deborah Whyman

House Bill 4304 as introduced
Sponsor: Rep. Roland Jersevic

House Bill 4305 as introduced
Sponsor: Rep. Allen Lowe

House Bill 4306 as introduced
Sponsor: Rep. Michael Goschka

First Analysis (2-9-95)
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

In the course of discussions of recent legislation to provide enhanced criminal sanctions for repeat domestic assault offenders (enacted as Public Act 64 of 1994), and for repeat shoplifters (discussed last session and reintroduced this session as House Bills 4197 to 4199), a significant shortcoming of state statute became evident. Various misdemeanor violations were being given 93-day maximum jail penalties, which would trigger statutory fingerprinting and criminal recordkeeping requirements, thereby enabling repeat offenders to be identified by checking with the state police. However, by statute, the maximum term that may attach to a violation of a local ordinance is 90 days, too short a period to trigger the fingerprinting and recordkeeping requirements of the criminal identification act, Public Act 289 of 1925, which applies the requirement to offenses punishable by more than 92 days. Thus, repeat batterers and shoplifters who are prosecuted under local ordinances, rather than state statute, may escape identification as repeat offenders. Legislation to allow 93-day penalties for certain ordinance violations has been proposed.

THE CONTENT OF THE BILLS:

By statute, jail penalties for local ordinance violations are limited to 90 days. The bills would

amend various statutes on local units of government to allow penalties of up to 93 days for violations of ordinances substantially corresponding to four state misdemeanor offenses: simple domestic assault (which is distinguishable from "aggravated" domestic assault), uttering and publishing (passing bad checks), first-offense food stamp fraud, and second-degree retail fraud (shoplifting and tag-switching). Maximum allowable fines would continue to be \$500. The bills are not tie-barred; any could take effect without the others being enacted.

House Bill 4302 would amend the Home Rule City Act (MCL 117.4i). House Bill 4303 would amend the Charter Township Act (MCL 42.21). House Bill 4304 would amend Public Act 246 of 1945, which deals with ordinance powers of township boards (MCL 41.483). House Bill 4305 would amend the Home Rule Village Act (MCL 78.24). House Bill 4306 would amend the General Law Village Act (MCL 66.2).

FISCAL IMPLICATIONS:

The Department of Social Services (DSS) reports that there is no estimated fiscal impact for the Department of Social Services, but that there may be some additional costs for the Department of State Police because of its responsibilities for the

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state's criminal record history system. The DSS reports that the number of local jurisdictions prosecuting these offenses as violations of local ordinances is believed to be small. (2-8-95) The Department of State Police confirms that the bills would have an indeterminate fiscal impact on the department; that impact would depend on the number of fingerprint cards received for ordinance violations under the bills. (2-8-95)

ARGUMENTS:

For:

The bills would improve the justice system's ability to identify repeat violators of laws proscribing domestic assault, bad-check passing, retail fraud (shoplifting and tag-switching), and food stamp fraud, thus enabling the enhanced sanctions applicable to repeat offenders to be brought to bear on these people. The offenses involved are ones where repeat violations are especially troublesome, and where an ability to track offenders absent criminal recordkeeping is lacking. The bills should be especially useful with regard to offenders in some of the larger jurisdictions, where ordinances on domestic assault and the other listed offenses are more likely to exist and be used in lieu of statute.

Response:

To enable repeat violators to be identified where their prior violations were ordinance violations, there would have to be language in statute recognizing violations of ordinances substantially corresponding to the applicable state laws. While such language already exists with regard to domestic assault and retail fraud, amendments to the appropriate statutes are needed with regard to passing bad checks and food stamp fraud. In addition, the bills could be successful only to the degree that local jurisdictions revised their ordinances to provide for the 93-day penalties; without this action by local units of government, the bills would be virtually without effect.

POSITIONS:

The Department of Social Services supports the bills. (2-8-95)

The Domestic Violence Project supports the bills. (2-6-95)

The Michigan Retailers Association supports the bills. (2-8-95)

The Michigan Townships Association supports House Bills 4303 and 4304. (2-8-95)

The Michigan Municipal League is reviewing the bills and has no formal position at this time. (2-8-95)

The Prosecuting Attorneys Association of Michigan is reviewing the bills and has no formal position at this time. (2-8-95)